

875—218.501(91D) Making sales or obtaining orders.

218.501(1) Rule 218.5(91D) requires that the employee be engaged in:

- a.* Making sales within the meaning of 875—subrule 218.5(1), or
- b.* Obtaining orders or contracts for services or for the use of facilities.

218.501(2) Generally included are the transfer of title to tangible property and, in certain cases, of tangible and valuable evidences of intangible property. Sales of automobiles, coffee, shoes, cigars, stocks, bonds, and insurance are construed as sales within the meaning of “sale” or “sell” which includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

218.501(3) The exempt work includes not only the sales of commodities, but also “obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.” “Obtaining orders or... for the use of facilities” includes the selling of time on the radio, the solicitation of advertising for newspapers and other periodicals and the solicitation of freight for railroads and other transportation agencies.

218.501(4) The word “services” extends the exemption as outside salespersons to employees who sell or take orders for a service, which is performed for the customer by someone other than the person taking the order. It includes the salesperson of a typewriter repair service who does not personally perform the repairing. It also includes otherwise exempt outside salespersons who obtain orders for the laundering of the customer’s own linens as well as those who obtain orders for the rental of the laundry’s linens.

218.501(5) The inclusion of the word “services” is not intended to exempt persons who, in a very loose sense, are sometimes described as selling “services.” It does not include persons such as service persons even though they may sell the service which they themselves perform. Selling the service in these cases would be incidental to the servicing rather than the reverse. It does not include outside buyers, who in a very loose sense are sometimes described as selling their employer’s “service” to the person from whom they obtain their goods. It is obvious that the relationship here is the reverse of that of salesperson-customer.

SOURCE: 29 CFR 541.501.